

background investigation and the information provided by management and medical sources.

(f) *Processing under 10 CFR part 710, subpart A.* Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under subpart A, §710.8 of this part. Any administrative review under the PSAP shall be conducted in accordance with the provisions and procedures in subpart A of this part.

PART 711—PERSONNEL ASSURANCE PROGRAM (PAP)

Subpart A—PAP Certification/Recertification, Temporary Removal/Reinstatement, and Revocation of PAP Certification

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Subpart A—PAP Certification/Recertification, Temporary Removal/Reinstatement, and Revocation of PAP Certification

§ 711.1 Purpose.

The purpose of this part is to establish a Personnel Assurance Program (PAP) in DOE. The PAP is a human reliability program designed to ensure that individuals assigned to nuclear explosive duties do not have emotional, mental, or physical incapacities that could result in a threat to nuclear explosive safety. The PAP establishes the requirements and responsibilities for screening, selecting, and continuously evaluating employees assigned to or being considered for assignment to nuclear explosive duties.

§ 711.2 Applicability.

(a) This part applies to DOE Headquarters and field elements and DOE contractors that manage, oversee, or conduct nuclear explosive operations and associated activities, and to DOE and DOE contractor employees assigned to nuclear explosive duties.

(b) This part does not apply to responses to unplanned events (e.g., Accident Response Group activities), which are addressed in DOE 5530-Series Orders and DOE Order 151.1, "Comprehensive Emergency Management System."

§ 711.3 Definitions.

The following definitions are used in this part:

Access means proximity to a nuclear explosive that affords a person the opportunity to tamper with it or to cause it to detonate.

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Alcohol use disorder means a maladaptive pattern in which a person's intake of alcohol is great enough to damage or adversely affect physical or mental health or personal, social, or occupational function; or when alcohol has become a prerequisite to normal function.

Certification means the formal action the PAP certifying official takes which permits an individual to be placed in the PAP and perform PAP duties. This action is taken once it has been determined an individual meets the requirements for certification under this part.

Contractor means the contractor and subcontractors at all tiers.

Designated physician means a licensed doctor of medicine or osteopathy who has been nominated by the SOMD and, with the concurrence of the Director, Office of Occupational Medicine and Medical Surveillance, approved by the operations office manager, to provide professional expertise in the area of occupational medicine as it relates to the PAP.

Designated psychologist means a licensed Ph.D. or Psy.D. clinical psychologist who has been nominated by the SOMD and, with the concurrence of the Director, Office of Occupational Medicine and Medical Surveillance, approved by the operations office manager, to provide professional expertise in the area of psychological assessment as it relates to the PAP.

Diagnostic and Statistical Manual for Mental Disorders means the current version of the American Psychiatric Association's manual containing definitions of psychiatric terms and diagnostic criteria of mental disorders.

Director, Office of Occupational Medicine and Medical Surveillance, means the chief occupational medical officer of the DOE with responsibility for policy and quality assurance for DOE occupational medical programs.

Drug abuse means use of an illegal drug or misuse of legal drugs.

Flashback means a transient, spontaneous, and often unpredictable recurrence of aspects of a person's use of a hallucinogen that involves dramatic alteration of emotional state, perception, sensation, and behavior.

Hallucinogen means any hallucinogenic drug or substance that has the potential to cause flashbacks.

Illegal drug means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, 812. The term "illegal drug" does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by Federal law.

Impaired or impairment means a decrease in functional capacity of a worker caused by a physical, mental, emotional, substance abuse, or behavioral disorder.

Job task analysis means a statement outlining the essential functions of a job and the potential exposures and hazards of an individual's specific job.

Medical assessment means an evaluation of a PAP individual's present health status and health risk factors by means of: (1) a medical history review; (2) the job task analysis; (3) a physical examination; (4) appropriate laboratory tests and measurements; and (5) appropriate psychological and psychiatric evaluations.

Medical Review Officer (MRO) means a licensed doctor of medicine or osteopathy who has knowledge of illegal drug use and other substance abuse disorders and has appropriate medical training to interpret drug test results. The MRO may also be the designated physician and/or SOMD.

Nuclear explosive means an assembly containing fissionable and/or fusionable materials and main charge high explosive parts or propellants capable of producing a nuclear detonation (e.g., a nuclear weapon or test device).

Nuclear explosive area means any area that contains a nuclear explosive or collocated pit and main charge high explosive parts.

Nuclear explosive duties means work assignments that allow custody of a nuclear explosive or access to a nuclear explosive device or area.

Occupational medical program means a DOE program that: (1) assists in the maintenance, monitoring, protection, and promotion of employee health through the skills of occupational medicine, psychology, and nursing; and (2)

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maintains a close interface with allied health disciplines, including industrial hygiene, health physics, and safety.

Operations office manager means the manager of a DOE operations office.

PAP certifying official or certifying official means the operations office manager or the manager's designee who certifies, recertifies, or reviews the circumstances of an individual's removal from nuclear explosive duties.

PAP individual means an individual being considered for assignment or assigned to perform nuclear explosive duties.

PAP official means any DOE employee who is involved in the PAP as a manager or supervisor or involved in the certification/recertification process.

Recertification means the formal action the PAP certifying official takes annually, not to exceed 12 months, which permits an individual to remain in the PAP and perform PAP duties. This action is taken once it has been determined an individual still meets the requirements of this part.

Reinstatement means the action the PAP certifying official takes once it has been determined an individual who has been temporarily removed from the PAP meets the certification requirements of this part and can be returned to the PAP and PAP duties.

Semi-structured interview means an interview by a designated psychologist who has the latitude to vary the focus and content of the questions depending upon the interviewee's responses.

Site Occupational Medical Director/SOMD means the physician responsible for the overall direction and operation of the site occupational medical program.

§711.4 General.

(a) PAP certification is required of each individual assigned to nuclear explosive duties in addition to any other job qualification requirements that may apply.

(b) Nothing in this part shall be construed as prohibiting contractors from establishing stricter employment standards for employees who are nominated to DOE for certification or recertification in the PAP.

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(c) The failure of an individual to be certified or recertified in the PAP shall not, in itself, reflect on the individual's suitability for assignment to other duties or, in itself, be a cause for loss of pay or other benefits or other changes in employment status.

(d) Personnel management actions based on consideration of technical competence and other job qualification requirements shall be considered only if they are based on behavior that also affects an individual's suitability for the PAP.

(e) Except for the functions in §711.12 (d), (e) and (h), an operations office manager may delegate PAP functions to a deputy manager, assistant manager, division director, and/or area office manager.

§711.5 General requirements.

(a) Each PAP individual shall be certified in the PAP before being assigned to nuclear explosive duties and shall be recertified annually, not to exceed 12 months between recertifications.

(b) To be certified or recertified in the PAP, an individual shall:

(1) Have an active DOE Q access authorization based upon a background investigation;

(2) Sign an acknowledgment and agreement to participate in the PAP on a form provided by DOE;

(3) Be interviewed and briefed on the importance of the nuclear explosive duty assignment and PAP objectives and requirements.

(4) Successfully complete an annual medical assessment for certification and recertification in accordance with Subpart B of this part;

(5) Not have used any hallucinogen in the preceding 5 years and shall not have experienced a flashback resulting from the use of any hallucinogen more than 5 years before applying for certification or recertification;

(6) If a DOE employee, be tested for illegal drugs at least once each calendar year in an unannounced and unpredictable manner under DOE Order 3792.3, "Drug-Free Federal Workplace Testing Implementation Program," and be subject to testing for cause or reasonable suspicion or after an accident or an unsafe practice involving the individual;

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(7) If a DOE contractor employee, be tested for illegal drugs at least once each calendar year in an unannounced and unpredictable manner under 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites," and be subject to testing for cause or reasonable suspicion or after an accident or an unsafe practice involving the individual; and

(8) Be eligible for a polygraph examination under 10 CFR part 709.

(c) If an individual in the PAP refuses to submit a urine sample for illegal drug testing or attempts deception by substitution, adulteration, or other means, DOE immediately shall remove the individual from nuclear explosive duties.

(d) An individual will be denied PAP certification, or shall have his or her certification revoked, immediately, if use of an illegal drug is confirmed through drug testing, as provided in §711.42 of Subpart B.

(e) An individual whose PAP certification is revoked for the use of illegal drugs will be considered for reinstatement in the PAP if the individual successfully completes an SOMD approved drug rehabilitation program, as provided in §711.42 of Subpart B and a PAP position is available for which the individual is qualified.

(f) If an individual chooses not to participate in the PAP, he or she shall sign a refusal of consent form provided by DOE.

[63 FR 48066, Sept. 8, 1998, as amended at 64 FR 70980, Dec. 17, 1999]

§711.6 PAP certification process.

(a) The PAP certifying official shall determine each PAP individual's suitability for certification or recertification in the PAP and review the circumstances concerning an individual's removal from nuclear explosive duties and possible reinstatement.

(b) Operations office managers who exercise jurisdiction over PAP certification shall issue instructions for implementing the PAP. At a minimum, the instructions shall provide for:

(1) Conducting a supervisory interview of each PAP individual, during which the supervisor shall determine the individual's willingness to accept

the requirements and conditions of the PAP;

(2) Ensuring that each PAP individual undergoes a medical assessment under subpart B of this part;

(3) Ensuring that the personnel security file (PSF) of each PAP individual is reviewed by a DOE employee trained to identify PAP concerns before the individual is certified or recertified;

(4) Ensuring that other available personnel data or information about each PAP individual is reviewed by an employee trained to identify PAP concerns before the individual is certified or recertified;

(5) Allowing the exchange of information about a PAP individual among responsible DOE officials during the certification, recertification, or certification review process. Any mental or behavioral issues which could impact an individual's ability to perform PAP duties may be provided to the SOMD, designated physician, and/or designated psychologist who have been previously identified for receipt of this information by the operations office manager or designee. In rare instances when information from an employee's PSF may be relevant, such information may be shared only with prior written approval of the manager or his/her designee. The Director, Office of Security Affairs, must be notified of the manager's decision to share PSF information, as well as the specific information provided and a brief summary of the circumstances. This notice should be provided as soon as practicable. Contractor medical personnel will not be allowed to view the PSF. Contractor medical personnel must not share any information obtained from the PSF with anyone who is not a DOE PAP official;

(6) Requesting certification or recertification of a contractor employee when the contractor has determined, on the basis of all available information, that the individual is suitable for the PAP. The contractor requesting certification or recertification shall, in writing, assure the PAP certifying official that all PAP certification requirements have been met;

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(7) Addressing any requirement not met during the certification/recertification process, and requiring a contractor to provide any additional personal data or information in its possession that may have a bearing on the certification/recertification of an individual;

(8) Documenting certification and recertification of each PAP individual on a form provided by DOE;

(9) Developing a mechanism for co-workers, supervisors, and managers to communicate concerns about a PAP individual's suitability for nuclear explosive duties;

(10) Ensuring that PAP concerns are reported to an appropriate official, as specified in §§711.9 and 711.10, for timely resolution;

(11) Providing that the processing of a request for certification or recertification of an individual is terminated if the individual is no longer being considered for assignment to nuclear explosive duties or is no longer assigned to such duties. If, subsequently, the individual is considered for assignment to nuclear explosive duties, the certification or recertification process must be completely redone; and

(12) Using recertification to return an individual whose certification has exceeded 12 months, and thus expired, to the PAP, once it has been determined an individual still meets the requirements of this part.

§711.7 Maintenance of PAP personnel list.

Operations office managers who exercise jurisdiction over PAP certification and recertification shall establish procedures for developing and maintaining a current list of DOE and contractor personnel certified in the PAP. The list is to be used for program administration and is not an authorization for personnel to perform nuclear explosive duties. The list shall be promptly updated and verified on a quarterly basis under the supervision of the operations office manager.

§711.8 PAP training requirements.

(a) Operations office managers shall ensure that each individual who is assigned to nuclear explosive duties re-

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ceives special training in PAP objectives, policies, and requirements.

(b) Operations office managers shall ensure that DOE and contractor supervisory personnel and PAP certifying officials receive training that includes:

(1) A detailed explanation of nuclear explosive duties and nuclear explosive safety;

(2) Instruction on PAP objectives, policies, and requirements;

(3) Instruction on the early identification of behavior that may indicate a degradation in reliability or judgment; and

(4) Special emphasis on the importance of timely reporting of any PAP concern to appropriate personnel.

(c) Operations office managers shall ensure that medical personnel who perform medical assessments receive, before performing PAP responsibilities, training that includes:

(1) A detailed explanation of nuclear explosive duties and nuclear explosive safety;

(2) Instruction on PAP objectives, policies, and requirements;

(3) An orientation on nuclear explosive duties and the work environment applicable to that of the PAP employee;

(4) Annual professional training on current issues and concerns relative to psychological assessment; and

(5) Special emphasis on the importance of timely reporting of any PAP concern to appropriate personnel.

(d) Operations office managers shall establish and maintain a system for documenting the training received by PAP-certified individuals, supervisors of PAP personnel, and medical personnel with PAP-related duties.

§711.9 Supervisor reporting.

(a) Supervisors shall document and report to a PAP official and the SOMD, if appropriate, any observed or reported behavior or condition of an individual that causes the supervisor to have a reasonable belief that the individual's ability to perform assigned tasks in a safe and reliable manner may be impaired.

(b) Behavior and conditions that could indicate unsuitability for the PAP include, but are not limited to, the following:

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(1) Psychological or physical disorders that impair performance of assigned duties;

(2) Conduct that warrants referral for a criminal investigation or results in arrest or conviction;

(3) Indications of deceitful or delinquent behavior;

(4) Attempted or threatened destruction of property or life;

(5) Suicidal tendencies or attempted suicide;

(6) Use of illegal drugs or the abuse of legal drugs or other substances;

(7) Alcohol use disorder;

(8) Recurring financial irresponsibility;

(9) Irresponsibility in performing assigned duties;

(10) Inability to deal with stress, or the appearance of being under unusual stress;

(11) Failure to understand work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, violation of safety or security procedures, or repeated absenteeism; and

(12) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control.

§711.10 Individual reporting.

(a) An individual in the PAP shall report any observed or reported behavior or condition of another PAP individual that could indicate the individual's unsuitability for nuclear explosive duties, including the behaviors and conditions listed in §711.9, to a supervisor, the SOMD, or other PAP official.

(b) An individual in the PAP shall report any behavior or condition, including any behavior or condition listed in §711.9, that may affect his or her own suitability for nuclear explosive duties to a supervisor, the SOMD, or other PAP official.

§711.11 Immediate removal from nuclear explosive duties.

(a) A supervisor who has a reasonable belief that an individual in the PAP is not suitable for nuclear explosive duties shall immediately remove that individual from those duties pending a determination of the individual's suitability. The supervisor shall, at a minimum:

(1) Require the individual to stop performing nuclear explosive duties;

(2) Take action to ensure the individual is denied access to nuclear explosive areas; and

(3) Notify the individual, in writing, the reason for these actions.

(b) A supervisor who removes an individual from nuclear explosive duties shall notify the PAP certifying official of the action and the reasons that led to the removal of the individual from nuclear explosive duties as soon as possible, and shall forward this information, in writing, to the PAP certifying official within 24 hours from the time the individual is removed from duties.

(c) Immediate removal of an individual from nuclear explosive duties is an interim, precautionary action and does not constitute a determination that the individual is not fit for nuclear explosive duties. Removal from nuclear explosive duties shall not, in itself, be cause for loss of pay or other benefits or other changes in employment status.

§711.12 Action following removal from duties.

(a) *Temporary removal.* If a PAP certifying official receives a supervisor's written notice of the immediate removal of an individual from nuclear explosive duties, the certifying official shall direct the removal of the individual from PAP duties pending an evaluation and determination regarding the individual's suitability for nuclear explosive duties. The applicable DOE personnel security office shall be notified if removal is based on a security concern.

(b) *Evaluation.* The PAP certifying official shall conduct an evaluation of the circumstances or information that led the supervisor to remove the individual from nuclear explosive duties. The PAP certifying official shall prepare a written report of the evaluation that includes the certifying official's determination regarding the individual's suitability for continuing PAP certification.

(c) *PAP certifying official's action.* (1) If the PAP certifying official determines that an individual who has been

removed temporarily from nuclear explosive duties continues to meet the requirements for certification in the PAP, the certifying official shall:

(i) Notify the operations office manager of the determination; and

(ii) Notify the individual's supervisor of the determination and direct that the individual be allowed to return to nuclear explosive duties.

(2) If the PAP certifying official determines that an individual who has been temporarily removed from PAP duties does not meet the requirements for certification, the certifying official shall refer the matter to the operations office manager for action. The certifying official shall submit the evaluation report to the operations office manager and a recommendation that the individual's PAP certification be revoked.

(d) *Operations office manager's initial decision.* After receipt of a PAP certifying official's evaluation report and recommendation for revoking an individual's PAP certification, the operations office manager shall take one of the following actions:

(1) Direct that the individual be reinstated in the PAP and, in writing, explain the reasons and factual basis for the action;

(2) Direct the revocation of the individual's PAP certification and, in writing, explain the reasons and factual basis for the decision; or

(3) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, security evaluation, treatment) to resolve the concerns about the individual's suitability for the PAP.

(e) In the event of a revocation, pursuant to §711.12(d)(2), or suspension pursuant to §711.12(d)(3), the operations office manager shall provide the individual a copy of the PAP certifying official's evaluation report. The manager may withhold such report, or portions thereof, to the extent that he/she determines that the report, or portions thereof, may be exempt from access by the individual under the Privacy Act or the Freedom of Information Act.

(f) *Reinstatement after completion of specified actions.* An individual directed by the operations office manager to take specified actions to resolve PAP

concerns shall be reevaluated by the certifying official after those actions have been completed. After considering the PAP certifying official's evaluation report and recommendation, the operations office manager shall direct either:

(1) Reinstatement of the individual in the PAP; or

(2) Revocation of the individual's PAP certification.

(g) *Notification of operations office manager's initial decision.* The operations office manager shall send by certified mail, return receipt requested, a written decision, including rationale, to an individual who is denied certification or recertification. The operations office manager's decision shall be accompanied by notification to the individual, in writing, of the procedures in paragraph (g) of this section and §§711.14–711.16 pertaining to reconsideration or a hearing on the operation office manager's decision.

(h) *Request for reconsideration or certification review hearing.* An individual who receives notification of an operation office manager's decision to deny or revoke his or her PAP certification may choose one of the following options:

(1) Take no action;

(2) Submit a written request to the operations office manager for reconsideration of the decision to deny or revoke certification. The request shall include the individual's response to any information that gave rise to a concern about the individual's suitability for nuclear explosive duties. The statement shall be signed under oath or affirmation before a notary public, and must be sent by certified mail to the operations office manager within 20 working days after the individual received notice of the operations office manager's decision; or

(3) Submit a written request to the operations office manager for a certification review hearing. The request for a hearing must be sent by certified mail to the operations office manager within 20 working days after the individual receives notice of the operations office manager's decision.

(i) *Operations office manager's decision after reconsideration or hearing.* (1) If an individual requests reconsideration by

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the operations office manager but not a certification review hearing, the operations office manager shall, within 20 working days after receipt of the individual's request, send by certified mail, return receipt requested, to the individual a final decision as to suitability based upon the individual's response and other relevant information available to the operations office manager.

(2) If an individual requests a certification review hearing, the operations office manager shall decide the matter after receipt of the certification review hearing officer's report and recommendation, as provided in § 711.15. The operations office manager shall, within 20 working days after receiving the hearing officer's report and recommendation, send by certified mail, return receipt requested, the operations office manager's final decision to the individual, accompanied by a copy of the hearing officer's report and recommendation, and the transcript of the certification review proceedings.

§ 711.13 Appointment of a certification review hearing officer and legal counsel.

(a) After receiving an individual's request for a certification review hearing, the operations office manager shall promptly appoint a certification review hearing officer. The hearing officer shall:

(1) Be a DOE attorney or a hearing official from the DOE Office of Hearings and Appeals and have a DOE Q access authorization; and

(2) Have no prior involvement in the matter or be directly supervised by any person who is involved in the matter.

(b) The operations office manager shall also appoint a DOE attorney as counsel for DOE, who shall assist the hearing officer by:

(1) Obtaining evidence;

(2) Arranging for the appearance of witnesses;

(3) Examining and cross-examining witnesses; and

(4) Notifying the individual in writing, at least 7 working days in advance of the hearing, of the scheduled place, date, and hour where the hearing will take place.

§ 711.14 Certification review hearing.

(a) The certification review hearing officer shall conduct the proceedings in an orderly and impartial manner to protect the interests of both the Government and the individual.

(b) An individual who requests a certification review hearing shall have the right to appear personally before the hearing officer; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and be accompanied and represented at the hearing by counsel of the individual's choosing or any other person and at the individual's own expense.

(c) In conducting the proceedings, the certification review hearing officer shall:

(1) Receive all information relating to the individual's fitness for PAP certification through witnesses or documentation;

(2) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and except as provided in paragraph (c)(3) of this section, cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence;

(3) Have the option to receive and consider oral or written statements adverse to the individual without affording the individual the opportunity to cross-examine the person making the statement in either of the following circumstances:

(i) The substance of the statement was contained in the individual's personnel security file and the head of the Federal agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government, and that the disclosure of that person's identity would substantially harm the national security; or

(ii) The substance of the statement was contained in the individual's personnel security file and the Assistant Secretary for Defense Programs or designee for that particular purpose has determined, after considering information furnished by the investigative agency concerning the reliability of

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the person and the accuracy of the statement, that —

(A) The statement appears to be reliable and material;

(B) Failure of the hearing officer to receive and consider such statement would substantially harm the national security; and

(C) The person who furnished the information cannot appear to testify due to death or severe illness, or due to some other good cause as determined only by the Assistant Secretary for Defense Programs;

(4) Ensure that if the procedures in paragraph (c)(3) of this section are used, the individual is given a description of the information, which shall be as comprehensive and detailed as the national security permits. In addition, if a statement is received under paragraph (c)(3)(ii) of this section, the identity of the person making the statement and the information to be considered shall be made available to the individual. The hearing officer shall give appropriate consideration to the fact that the individual did not have an opportunity to cross-examine such person;

(5) Require the testimony of the individual and all witnesses be given under oath or affirmation;

(6) Request that the Assistant Secretary for Defense Programs issue subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence; and

(7) Ensure that a transcript of the certification review proceedings is made.

§711.15 Hearing officer's report and recommendation.

Not later than 30 working days after the conclusion of the hearing, the certification review hearing officer shall forward written findings, a supporting statement of reasons, and recommendation regarding the individual's suitability for certification or recertification in the PAP to the operations office manager. The hearing officer's report and recommendation shall be accompanied by a copy of the record of the proceedings.

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§711.16 Appeal of the operations office manager's final decision.

(a) An individual who has been denied PAP certification or recertification, or whose certification has been revoked, may appeal the operations office manager's decision to the Assistant Secretary for Defense Programs. The appeal must be sent to the Assistant Secretary for Defense Programs, by certified mail, no later than 20 working days after the individual receives the operations office manager's decision.

(b) An individual who appeals an operations office manager's decision to the Assistant Secretary for Defense Programs must submit the appeal and a written supporting statement to the Assistant Secretary for Defense Programs through the operations office manager and the Deputy Assistant Secretary for Military Application and Stockpile Management. The individual must also submit:

(1) A copy of the operations office manager's final decision and any related documentation; and

(2) If a certification review hearing was conducted, a copy of the hearing officer's report and recommendation and the record of the proceedings.

(c) Within 20 working days of the receipt of an individual's appeal and supporting documents, the Assistant Secretary for Defense Programs shall review all of the information and issue a written decision in the matter. The decision of the Assistant Secretary for Defense Programs shall be final for DOE.

(d) If an individual does not appeal to the Assistant Secretary for Defense Programs within the time specified in paragraph (a) of this section, the operations office manager's decision shall be the final decision.

Subpart B—Medical Assessments for PAP Certification and Recertification

GENERAL PROVISIONS

§711.20 Applicability.

The purpose of this subpart is to establish standards and procedures for conducting medical assessments of DOE and DOE contractor employees in the PAP.

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§711.21 Purpose and scope.

The standards and procedures set forth in this part are necessary for DOE to:

- (a) Identify the presence of any mental, emotional, physical, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in judgment, reliability, or fitness of an individual to perform nuclear explosive duties safely and reliably;
- (b) Facilitate the early diagnosis and treatment of disease or impairment and to foster accommodation and rehabilitation of a disabled individual with the intent of returning the individual to assigned nuclear explosive duties;
- (c) Determine what functions an employee may be able to perform and to facilitate the proper placement of employees; and (d) Provide for continuing monitoring of the health status of employees in order to facilitate early detection and correction of adverse health effects, trends, or patterns.

RESPONSIBILITIES AND AUTHORITIES

§711.30 Designated physician.

(a) The designated physician shall be qualified to provide professional expertise in the area of occupational medicine as it relates to the PAP. The designated physician may serve in other capacities, including Medical Review Officer.

(b) The designated physician shall:

- (1) Be a physician who is a graduate of an accredited school of medicine or osteopathy;
- (2) Have a valid, unrestricted state license to practice medicine in the state where PAP medical assessments occur;
- (3) Have met the applicable PAP training requirements; and (4) Be eligible for DOE access authorization.

(c) The designated physician shall be responsible for the medical assessments of PAP individuals, including determining which components of the medical assessments may be performed by other qualified personnel. Although a portion of the assessment may be performed by another physician, physician's assistant, or nurse practitioner, the designated physician remains responsible for:

- (1) Supervising the evaluation process;
 - (2) Interpreting the results of evaluations;
 - (3) Documenting medical conditions that may disqualify an individual from the PAP;
 - (4) Providing medical assessment information to the designated psychologist to assist in determining psychological fitness;
 - (5) Determining, in conjunction with DOE, if appropriate, the location and date of the next required medical assessment, thereby establishing the period of certification; and (6) Signing a recommendation as to the medical fitness of an individual for certification or recertification.
- (d) The designated physician shall immediately report to the SOMD any of the following about himself or herself:

- (1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;
- (2) Initiation of an adverse action by any federal regulatory board since the last designation;
- (3) The withdrawal of the privilege to practice by any institution;
- (4) Being named a defendant in any criminal proceedings (felony or misdemeanor) since the last designation;
- (5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or
- (6) Occurrence of a physical or mental health condition since the last designation that might affect his or her ability to perform professional duties.

§711.31 Designated psychologist.

(a) The designated psychologist shall report to the SOMD and shall determine the psychological fitness of an individual to participate in the PAP. The results of this evaluation shall be provided only to the designated physician or the SOMD.

(b) The designated psychologist shall:

- (1) Hold a doctoral degree from a clinical psychology program that includes a 1-year clinical internship approved by the American Psychological Association or an equivalent program;
- (2) Have accumulated a minimum of 3 years postdoctoral clinical experience

with a major emphasis in psychological assessment;

(3) Have a valid, unrestricted state license to practice clinical psychology in the state where PAP medical assessments occur;

(4) Have met the applicable PAP training requirements; and

(5) Be eligible for DOE access authorization .

(c) The designated psychologist shall be responsible for the performance of all psychological evaluations of PAP individuals, and otherwise as directed by the SOMD. In addition, the designated psychologist shall:

(1) Designate which components of the psychological evaluation may be performed by other qualified personnel;

(2) Upon request of management, assess the psychological fitness of personnel for PAP duties in specific work settings and recommend referrals as indicated;

(3) Conduct and coordinate educational and training seminars, workshops, and meetings to enhance PAP individual and supervisor awareness of mental health issues;

(4) Establish personal workplace contact with supervisors and workers to help them identify psychologically distressed PAP individuals; and

(5) Make referrals for psychiatric, psychological, substance abuse, personal or family problems, and monitor the progress of individuals so referred.

(d) The designated psychologist shall immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceeding (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence of a physical or mental health condition that might affect his or her ability to perform professional duties since the last designation.

§ 711.32 Site Occupational Medical Director (SOMD).

(a) The SOMD shall nominate a physician to serve as the designated physician and a clinical psychologist to serve as the designated psychologist. The nominations shall be sent through the operations office to the Director, Office of Occupational Medicine and Medical Surveillance. Each nomination shall describe the nominee's relevant training, experience, and licensure, and shall include a curriculum vitae and a copy of the nominee's current state or district license.

(b) The SOMD shall submit a renomination report biennially through the operations office manager to the Director, Office of Occupational Medicine and Medical Surveillance. This report shall be submitted at least 60 days before the second anniversary of the initial designation or of the last redesignation, whichever applies. The report shall include:

(1) A statement evaluating the performance of the designated physician and designated psychologist during the previous designation period;

(2) A summary of all PAP-relevant training, including postgraduate education, that the designated physician and designated psychologist has completed since the last designation; and

(3) A copy of the valid, unrestricted state or district license of the designated physician and designated psychologist.

(c) The SOMD shall submit, annually, to the Director, Office of Occupational Medicine and Medical Surveillance, through the operations office manager, a written report summarizing PAP medical activity during the previous year. The SOMD shall comply with any DOE directives specifying the form or contents of the annual report.

(d) The SOMD shall investigate any reports of problems regarding a designated physician or designated psychologist, and the SOMD may suspend either official from PAP-related duties. If the SOMD suspends either official, the SOMD shall notify the Director, Office of Occupational Medicine and Medical Surveillance and the operations office manager, and provide supporting documentation and reasons for the action.

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§ 711.33 Director, Office of Occupational Medicine and Medical Surveillance.

The Director, Office of Occupational Medicine and Medical Surveillance, shall:

- (a) Develop policies, standards, and guidance related to the medical aspects of the PAP, including the psychological testing inventory to be used;
- (b) Review the qualifications of designated physicians and designated psychologists, and concur or nonconcur in their designations by sending a statement to the responsible program office and the operations office, with an informational copy to the SOMD;
- (c) Provide technical assistance on medical aspects of the PAP to all DOE elements and DOE contractors; and
- (d) Concur or nonconcur with the medical bases of decisions rendered on appeals of PAP certification decisions.

§ 711.34 Operations office managers; Director, Transportation Safeguards Division.

Operations office managers and the Director, Transportation Safeguards Division, shall approve, upon the nomination of the SOMD and concurrence of the Director, Office of Occupational Medicine and Medical Surveillance, physicians and psychologists to serve as designated physicians and designated psychologists.

MEDICAL ASSESSMENT PROCESS AND STANDARDS

§ 711.40 Medical standards for certification.

To be certified in the PAP, an individual shall be free of any mental, emotional, or physical condition or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in judgment, reliability, or fitness of an individual to perform nuclear explosive duties safely and reliably. The designated physician, with the assistance of the designated psychologist, shall determine the existence or nature of any of the following:

- (a) Physical or medical disabilities such as visual acuity, defective color vision, impaired hearing, musculo-

skeletal deformities, and neuromuscular impairment;

- (b) Mental disorders or behavioral problems, including substance use disorders, as defined in the Diagnostic and Statistical Manual of Mental Disorders;

- (c) Use of illegal drugs or the abuse of legal drugs or other substances, as identified by self-reporting, or by medical or psychological evaluation or testing;

- (d) Alcohol use disorder;

- (e) Threat of suicide, homicide, or physical harm; or

- (f) Cardiovascular disease, endocrine disease, cerebrovascular or other neurologic disease, or the use of drugs for the treatment of such conditions that may adversely affect the judgment or ability of an individual to perform assigned duties in a safe and reliable manner.

§ 711.41 Medical assessment process.

- (a) The designated physician, under the supervision of the SOMD, shall be responsible for the medical assessment of PAP individuals. In carrying out this responsibility, the designated physician or the SOMD shall integrate the medical evaluations, available drug testing results, psychological evaluations, any psychiatric evaluations, and any other relevant information to determine an individual's overall medical qualification for assigned duties.

- (b) Employers shall provide a job task analysis or detailed statement of duties for each PAP individual to both the designated physician and the designated psychologist before each medical assessment and psychological evaluation. PAP medical assessments and psychological evaluations shall not be performed if a job task analysis or detailed statement of duties has not been provided.

- (c) The designated physician shall consider a PAP individual's fitness for nuclear explosive duties at the time of each medical contact, including:

- (1) Medical assessments for initial certification, annual recertification, and evaluations for reinstatement following temporary removal from the PAP;

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(2) Intermediate evaluations, including job transfer evaluations, evaluations upon self-referral, and referral by management;

(3) Routine medical contacts, including routine return-to-work evaluations and occupational and nonoccupational health counseling sessions; and

(4) A review of current, legal drug use.

(d) Psychological evaluations shall be conducted:

(1) For initial certification. This psychological evaluation consists of a generally accepted, self-reporting psychological inventory tool approved by the Director, Office of Occupational Medicine and Medical Surveillance, and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview.

(3) Every third year. The medical assessment for recertification shall include a generally accepted self-reporting psychological inventory tool approved by the Director, Office of Occupational Medicine and Medical Surveillance.

(4) Additional psychological or psychiatric evaluations may be required by the SOMD when needed to resolve PAP concerns.

(e) Following absences requiring return-to-work evaluations under applicable DOE directives, the designated physician, with assistance from the designated psychologist, shall determine whether a psychological evaluation is necessary.

(f)(1) Except as provided in paragraph (f)(2) of this section, the designated physician shall forward the completed medical assessment of a PAP individual to the SOMD, who shall send a recommendation based on the assessment simultaneously to the individual's PAP administrative organization and to the PAP certifying official.

(2) If the designated physician determines that a currently certified individual no longer meets the PAP standards, the designated physician shall immediately, orally, inform the PAP certifying official and the PAP individual's administrative organization, following up in writing as appropriate.

(g) Only the designated physician, subject to informing the SOMD, shall

make a medical recommendation for return to work and work accommodations for PAP individuals.

(h) The following documentation is required for routine use in the PAP after treatment of an individual for any disqualifying condition:

(1) A summary of the diagnosis, treatment, current status, and prognosis to be furnished to the designated physician;

(2) The medical opinion of the designated physician advising the individual's supervisor on whether the individual is able to return to work in either a PAP or non-PAP capacity; and

(3) Any periodic monitoring plan approved by the designated physician, the designated psychologist, and the SOMD, that is used to evaluate the reliability of the employee.

§711.42 Medical assessment for drug abuse.

(a) Except as otherwise provided by this section, a medical assessment for illegal drug use by DOE employees shall be conducted under DOE Order 3792.3, "Drug-Free Federal Workplace Testing Implementation Program," or any successor order issued by DOE.

(b) Except as otherwise provided by this section, a medical assessment for illegal drug use by DOE contractor employees shall be conducted under 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites."

(c) In each case of drug abuse, the SOMD, in consultation with the designated psychologist, shall evaluate the individual for evidence of psychological impairment and make a recommendation to the PAP certifying official as to the individual's reliability.

(d) If an individual successfully completes an SOMD-approved drug rehabilitation program, DOE may reinstate the individual in the PAP based on the SOMD's follow-up evaluation and recommendation. The individual reinstated will be subject to SOMD-directed unannounced tests for illegal drugs and relevant counseling for 3 years.

§711.43 Evaluation for hallucinogen use.

If DOE determines that a PAP individual has used any hallucinogen, the

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individual shall not be eligible for certification or recertification unless:

(a) Five years have passed since the last use of the hallucinogen;

(b) A medical evaluation, including a psychological test, is performed to determine that the individual is reliable; and

(c) The individual has a record of acceptable job performance and observed behavior.

§ 711.44 Medical assessment for alcohol use disorder.

(a) If alcohol abuse is suspected, an individual shall be examined for evidence of alcohol use disorder. If the examination produces evidence of alcohol use disorder, additional evaluation shall be conducted, which may include psychological evaluation.

(b) Alcohol consumption is prohibited within an 8-hour period preceding scheduled work and during the performance of nuclear explosive duties.

(c) Individuals in the PAP, including individuals who report for unscheduled work, may be tested for cause or reasonable suspicion of alcohol use or after an accident or an unsafe practice involving the individual.

(d) DOE shall implement or require the contractor to implement procedures that will ensure that persons called in to perform unscheduled work are fit to perform the tasks assigned.

(e) Tests for alcohol must be administered by a certified Breath Alcohol Technician using an evidential-grade breath analysis device approved for use at the 0.02/0.04 cut-off levels that conforms to the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) model specifications (58 FR 48705, September 17, 1993), and the most recent "Conforming Products List" issued by NHTSA which are available from the Office of Traffic Safety Programs, Washington, DC.

(f) An individual whose confirmatory breath alcohol test result is at or above an alcohol concentration of 0.02 percent shall not be allowed to perform nuclear explosive duties until the individual's alcohol concentration is below 0.02 percent using an evidential-grade breath analysis device described in section 711.44(e).

(g) Individuals subject to alcohol testing under DOT regulations shall be subject to the sanctions promulgated by the Federal Highway Administration rule. Appropriate disciplinary action will be taken under DOE's authority.

(h) Individuals refusing to submit to a breath alcohol test shall be immediately removed from nuclear explosive duties.

(i) The SOMD, in conjunction with the designated psychologist, shall evaluate each case of alcohol use disorder for evidence of psychological impairment and provide the PAP certifying official a recommendation as to the individual's reliability.

(j) After successfully completing an SOMD-approved alcohol treatment program, DOE may reinstate an individual in the PAP based on the SOMD's follow-up evaluation and recommendation.

§ 711.45 Maintenance of medical records.

(a) Medical records produced or used in the PAP certification process shall be collected and maintained on separate forms and in separate medical files, and be treated as a confidential medical record.

(b) The medical records of PAP individuals shall be maintained in accordance with the Privacy Act, 5 U.S.C. 552a and DOE implementing regulations in 10 CFR Part 1008; the Department of Labor's regulations on access to employee exposure and medical records, 29 CFR 1910.1020; and applicable DOE directives. DOE contractors also may be subject to § 503 of the Rehabilitation Act, 29 U.S.C. 793, and its implementing rules, including confidentiality provisions at 29 CFR 60-741.23(d).

(c) The psychological record of a PAP individual shall be considered a component of the medical record. The psychological record shall:

(1) Contain any clinical reports, test protocols and data, notes of employee contacts and correspondence, and other information pertaining to an individual's contact with a psychologist;

(2) Be stored in a secure location in the custody of the designated psychologist;

(3) Be kept separate from other medical record documents, with access limited to the SOMD, the designated physician, the designated psychologist, or other persons who are authorized by law or regulation to have access; and

(4) Be retained indefinitely.

(d) The records of alcohol and drug testing shall be maintained in accordance with 42 CFR part 2, “Confidentiality of Alcohol and Drug Abuse Patient Records,” and 10 CFR part 707, “Workplace Substance Abuse Programs at DOE Sites.”

PART 715—DEFINITION OF NON—RECURSE PROJECT—FINANCED

Sec.

715.1 Purpose and scope.

715.2 Definitions.

715.3 Definition of “Nonrecourse Project—Financed.”

AUTHORITY: 42 U.S.C. 7651o(a)(2)(B); 42 U.S.C. 7254.

SOURCE: 56 FR 55064, Oct. 24, 1991, unless otherwise noted.

§ 715.1 Purpose and scope.

This part sets forth the definition of “nonrecourse project-financed” as that term is used to define “new independent power production facility,” in section 416(a)(2)(B) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651o(a)(2)(B). This definition is for purposes of section 416(a)(2)(B) only. It is not intended to alter or impact the tax treatment of any facility or facility owner under the Internal Revenue Code and regulations.

§ 715.2 Definitions.

As used in this subpart—

Act means the Clean Air Act Amendments of 1990, 104 Stat. 2399.

Facility means a “new independent power production facility” as that term is used in the Act, 42 U.S.C. 7651o(a)(2).

§ 715.3 Definition of “Nonrecourse Project—Financed”.

Nonrecourse project-financed means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues

received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by section 201(e) of the Federal Power Act, as amended, 16 U.S.C. 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility’s owners or other project participants will not disqualify a facility from being “nonrecourse project-financed” as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from the revenues generated by the facility, rather than from other sources of funds. Projects that are 100 percent equity financed are also considered “nonrecourse project-financed” for purposes of section 416(a)(2)(B).

PART 719—CONTRACTOR LEGAL MANAGEMENT REQUIREMENTS

Subpart A—General Provisions

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719.2 What are the definitions of terms used in this part?

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